

Message Text

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PAGE 01 BRASIL 06488 01 OF 02 180249Z
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LIMITED OFFICIAL USE SECTION 1 OF 2 BRASILIA 6488

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SUBJECT: NEW ANTI-STRIKE DECREE

1. SUMMARY: ON AUGUST 4 PRESIDENT ERNESTO GEISEL SIGNED A DECREE LAW BANNING STRIKES INVOLVING PUBLIC SERVICES AND ESSENTIAL ACTIVITIES AFFECTING BRAZILIAN NATIONAL SECURITY. THE DECREE ESTABLISHES THAT THE FOLLOWING ESSENTIAL ACTIVITIES ARE OF INTEREST TO NATIONAL SECURITY AND ACCORDINGLY BANS STRICKES AFFECTING THESE AREAS: WATER SUPPLY AND SEWAGE SERVICES; ELECTRICITY; GAS; PETROLEUM AND OTHER COMBUSTIBLE FUELS; TRANSPORTATION AND COMMUNICATIONS; HOSPITALS, AMBULANCES AND MATERNITY FACILITIES; PHARMACIES; BANKS; AND OTHER FACILITIES WHICH MAY BE DESIGNATED BY THE PRESIDENT OF BRAZIL. THE NEW DECREE ALSO PROHIBITS ALL GOVERNMENTAL EMPLOYEES AT MUNICIPAL, STATE AND FEDERAL LEVELS FROM TAKING STRIKE ACTION.

THE ANTI-STRIKE DECREE ATTEMPTS TO DEFINE STRIKE ACTIVITY AS BEING THAT WHICH BRINGS ABOUT EITHER A WORK-STOPPAGE OR A REDUCTION OF THE NORMAL WORK PACE. AN EMPLOYEE WHO PARTICIPATES IN A STRIKE ACTION OR A UNION LEADER WHO DIRECTLY OR INDIRECTLY SUPPORTS OR
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PAGE 02 BRASIL 06488 01 OF 02 180249Z

PROMOTES THE STRIKE TO THE DETRIMENT OF PUBLIC OR ESSENTIAL ACTIVITIES WILL BE SUBJECT TO THE FOLLOWING PUNISHMENTS: WARNING; SUSPENSION; OR DISMISSAL BY THE MINISTRY OF LABOR. END SUMMARY

2. LEGAL BACKGROUND ON STRIKE LEGISLATION:
THE PRESIDENT OF THE REPUBLIC ISSUED DECREE-LAW (NO. 1'632)

ON AUGUST 4 WHICH REDEFINES THE AREA OF ACTIVITIES CONSIDERED TO BE ESSENTIAL TO NATIONAL SECURITY. THE FOLLOWING IS A BRIEF HISTORY OF BRAZILIAN LEGISLATION ON STRIKES:

A. FORMER BRAZILIAN CONSTITUTIONS, AND THE ONE CURRENTLY IN FORCE, HAVE RECOGNIZED THE RIGHT TO STRIKE, EXCEPT IN PUBLIC SERVICE AND IN ESSENTIAL ACTIVITIES"AS DEFINED BY LAW".

B. THE CONSOLIDATION OF BRAZILIAN LABOR LAWS (DECREE-LAW NO. 5452 OF MAY 1, 1943) ALSO DEALS WITH QUESTIONS OF LOCK-OUTS AND STRIKES. IT PROVIDES THAT WORK STOPPAGES BY EMPLOYEES WHO, COLLECTIVELY AND WITHOUT AUTHORIZATION OF THE COURT WHICH HAS JURISDICTION OVER THEM, ABANDON WORK OR DISOBEY ANY COURT DECISION RELATED TO THEIR PROFESSIONAL CLASS WILL BE PUNISHED. PENALTIES VARY FROM SUSPENSION TO DISMISSAL FOR EMPLOYEES WHO PARTICIPATE IN STRIKES. LABOR UNION REPRESENTATIVES WHO PROMOTE THESE ACTIVITIES WILL ALSO BE PUNISHED.

C. LAW NO. 4330 OF JUNE 1, 1964 (A POST-REVOLUTIONARY LAW) IMPLEMENTED PROVISIONS OF THE BRAZILIAN CONSTITUTION ON THE RIGHT TO STRIKE, BUT LIMITED THAT RIGHT SUBSTANTIALLY BY DEFINING THE KINDS OF ACTIVITIES IN WHICH STRIKES WOULD NOT BE PERMITTED, AND CASES IN WHICH THEY WOULD BE CONSIDERED LEGAL OR ILLEGAL. STRIKES, UNDER LIMITED OFFICIAL USE

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PAGE 03 BRASIL 06488 01 OF 02 180249Z

THAT LAW, ARE PROHIBITED IN THE PUBLIC SERVICES OF UNIONS, STATES AND MUNICIPALITIES, AND IN ESSENTIAL SERVICES SUCH AS WATER SUPPLY, ENERGY, LIGHT, GAS, SEWAGE, COMMUNICATIONS, TRANSPORTATION, HEAVY CARGO, MORTUARY SERVICE, HOSPITALS, MATERNITY WARDS, SALE OF ESSENTIAL FOOD, PHARMACIES, HOTELS AND "INDUSTRIES CONSIDERED AS BASIC OR ESSENTIAL FOR THE NATIONAL SECURITY." IT FURTHER PROVIDES THAT THE PRESIDENT SHOULD ISSUE A DECREE WITHIN 30 DAYS DEFINING WHICH INDUSTRIES WOULD BE CONSIDERED AS BASIC OR ESSENTIAL FOR NATIONAL SECURITY. A LIST OF SUCH INDUSTRIES MAY BE REVIEWED EVERY TWO YEARS. ON THE OTHER HAND, STRIKES WOULD BE PROHIBITED WHENEVER THEY WERE MOTIVATED BY POLITICAL, RELIGIOUS, PARTY OR SOCIAL REASONS, OR IN CASES OF STRIKES SUPPORTING OTHER PROFESSIONAL CATEGORIES, OR WHEN CONDUCTED FOR THE PURPOSE OF CLAIMING ADVANTAGES OR BENEFITS DENIED BY LABOR COURTS OR DESIGNED TO ALTER CONDITIONS ALREADY ESTABLISHED BY COLLECTIVE AGREEMENTS OR RULES ESTABLISHED

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PAGE 01 BRASIL 06488 02 OF 02 180437Z
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LIMITED OFFICIAL USE SECTION 2 OF 2 BRASILIA 6488

BY LABOR COURTS, UNLESS FOUNDATIONS FOR SUCH AN ACTION WERE DIFFERENT. PENALTIES FOR VIOLATORS INCLUDED:
A) WARNING; B) WORK SUSPENSION OF UP TO 30 DAYS; AND
C) DISMISSAL FOR CAUSE IN ADDITION TO OTHER PENALTIES WHICH MIGHT BE APPLICABLE UNDER CRIMINAL LEGISLATION.
D) THE NATIONAL SECURITY LAW (DECREE-LAW 898 OF SEPTEMBER 29, 1969) ALSO DEALS WITH THIS SUBJECT.
IT PROVIDES (IN ARTICLE 29) THAT THE ACTION OF STOPPING OR MAKING DIFFICULT THE FUNCTIONING OF ESSENTIAL SERVICES ADMINISTERED BY THE STATE OR CARRIES OUT BY CONCESSION WITHOUT AUTHORIZATION OR PERMISSION IS CONSIDERED AS AN OFFENSE AGAINST THE NATIONAL SECURITY, AND IS PUNISHABLE WITH IMPRISONMENT FROM 8 TO 20 YEARS. IF DEATH RESULTS FROM SUCH ACTION, THE PENALTY WILL BE INCREASED TO LIFE IMPRISONMENT OR DEATH.

3. HIGHLIGHTS OF NEWDECREE:
AS MENTIONED BRIEFLY ABOVE, DECREE-LAW NO. 1,632 REDEFINES THE AREAS OF ACTIVITIES AND SERVICES AFFECTING BRAZILIAN NATIONAL SECURITY AND PROVIDES PENALTIES FOR SUCH VIOLATIONS. THE NEWDECREE-LAW DOES NOT, HOWEVER, INTRODUCE MANY INNOVATIONS. IT DELETES THREE CATEGORIES OF ACTIVITIES WHICH WERE CONSIDERED AS ESSENTIAL UNDER LAW 4,330 (MORTUARY
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PAGE 02 BRASIL 06488 02 OF 02 180437Z

SERVICE, HOTELS AND SALE OF ESSENTIAL FOOD) AND INCLUDES THREE NEW CATEGORIES (OUT-PATIENT UNITS OF CLINICS OR HOSPITALS, BANKS AND PETROLEUM), AS WELL AS THEIR SECTORS OF PRODUCTION, DISTRIBUTION AND MARKETING. THE

PENALTIES FOR EMPLOYEES ENGAGED IN THESE AREAS WHO GO ON STRIKE OR CONTRIBUTE TO STRIKE ACTION ARE THE SAME AS THOSE PROVIDED FOR UNDER LAW 4,330. THE DIRECTORS OF THE LABOR UNIONS WHO SUPPORT OR ENCOURAGE STRIKES IN PUBLIC SERVICE OR ESSENTIAL ACTIVITIES WILL BE PUNISHED WITH A WARNING OR A LOSS OF MANDATE BY AN ACT OF THE MINISTER OF LABOR.

4. COMMENT: THE NEW DECREE-LAW IS ALREADY IN FORCE. IT WILL BE SUBMITTED TO CONGRESS, WHICH MUST APPROVE OR REJECT IT (WITHOUT OPTION TO AMEND) WITHIN 60 DAYS. IF CONGRESS DOES NOT ACT WITHIN THIS TIME, THE DECREE-LAW WILL BE CONSIDERED APPROVED. HOWEVER, IF CONGRESS REJECTS IT, ACTIONS UNDERTAKEN DURING THE PERIOD IN WHICH THE DECREE-LAW WAS IN FORCE WILL BE CONSIDERED AS VALID. THE NEW DECREE HAS BEEN SUBJECTED TO CONSIDERABLE CRITICISM, MAINLY BY THE OPPOSITION (MDB), LABOR UNION LEADERS AND THE PRESS. THE MAIN ARGUMENTS AGAINST THE DECREE-LAW HAVE BEEN: A) THAT IT IS INNOCUOUS BECAUSE IT DOES NOT CONTAIN ANY SIGNIFICANT INNOVATION IN RELATION TO EXISTING LAWS ON THE SUBJECT; AND B) THAT THERE WAS NO NEED FOR FOR THE DECREE-LAW, SINCE THE MATTER COULD HAVE BEEN REGULATED BY AN ORDINARY LAW PASSED BY CONGRESS.

5. THE PRESIDENT OF THE SENATE AND MEMBERS OF THE GOVERNMENT PARTY (ARENA), HAVE COUNTERED THAT THE NEW DECREE-LAW WAS ISSUED IN ACCORDANCE WITH LEGISLATION IN FORCE AND THAT THE BRAZILIAN CONSTITUTION GRANTS THE PRESIDENT POWER TO ISSUE DECREE-LAWS IN CASES INVOLVING NATIONAL LIMITED OFFICIAL USE

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PAGE 03 BRASIL 06488 02 OF 02 180437Z

SECURITY, AND NOTHING THAT US LEGISLATION ON THE MATTER IS EVEN MORE STRICT. PRESIDENTIAL PRESS SPOKESMAN COLONEL RUBEN LUDWIG TOLD THE PRESS THAT THE FUNDAMENTAL REASON FOR ISSUING THE DECREE-LAW WAS THE GOVERNMENT'S DESIRE TO SOFTEN PENALTIES FOR PEOPLE WHO GET INVOLVED IN STRIKES AND THAT THE NEW LAW IS MORE IN LINE WITH THE PRESIDENTS'S PROPOSED POLITICAL REFORMS. HE ALSO STATED THAT THE STRIKERS WILL BE SUBJECTED TO PENALTIES UNDER THE NEW DECREE-LAW AND NOT UNDER THE NATIONAL SECURITY STATUTE. THE PRESS HAS REPORTED THAT THE PRESIDENT WILL SOON ISSUE A DECREE DEFINING WHICH INDUSTRIES ARE CONSIDERED ESSENTIAL TO THE NATIONAL SECURITY, AS PROVIDED IN LAW 4,330.

6. IN SUMMARY, THE NEW DECREE-LAW SEEMS TO OFFER THE GOVERNMENT BETTWER CHANCES OF ENFORCING THE STRIKE LEGISLATION. THE PENALTIES PROVIDED FOR UNDER THE NATIONAL SECURITY LAW (IMPRISONMENT FROM 8 TO 20 YEARS) ARE UNREALISTIC AND VIRTUALLY IMPOSSIBLE TO ENFORCE. THE GOVERNMENT NOW HAS AT ITS DISPOSAL LEGISLATION WHICH HAS

EXPANDED THE AREAS OF ACTIVITIES IN WHICH STRIKES ARE
PROHIBITED AND REDUCED PENALTIES FOR STRIKE ACTION TAKEN
BY AN EMPLOYEE AND/OR UNION OFFICIAL. STRONG REACTION
AGAINST THE DECREE-LAW AMONG LABOR UNION LEADERS, HOWEVER,
SEEMS TO INDICATE THAT BRAZILIAN WORKERS MAY EVENTUALLY
TRY TO TEST OR CHALLENGE THE NEW LEGISLATION AS WELL AS
THE GOVERNMENT'S DETERMINATION TO ENFORCE IT.
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